

October 29, 2009

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USDA Forest Service
Attn: Appeal Reviewing Officer
1720 Peachtree Road, NW, Suite 811N
Atlanta, GA 30309-9102

Dear Appeal Reviewing Officer:

American Whitewater hereby requests that the United States Forest Service reconsider and vacate the "stay" of the boating provisions on the Upper Chattooga River issued by the Deputy Regional Forester for State and Private Forestry, Southern Region, on October 26, 2009.

In support of this request, American Whitewater states:

1. The Stay Has No Legal Effect, Not Having Been Issued by the Review Officer.

Section 2 of the Optional Appeal Procedures Available During the Planning Rule Transition Period (Optional Procedures) defines reviewing officer as:

Reviewing officer is the line officer one administrative level higher than the deciding officer or, in the case of a discretionary review, one level higher than the line officer who issued a first-level appeal decision.

The deciding officers for the amendments to the Forest Plans on the Sumter, Chattahoochee and Nantahala National Forests were the Forest Supervisors. Only the Regional Forester is "the line officer one administrative level higher than the" Forest Supervisors.

Section 10 of the Optional Procedures includes the following:

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- (e) The reviewing officer shall rule on stay requests within 10 days of receipt of a request.
- (f) In deciding a stay request, a reviewing officer shall consider:
- (g) A reviewing officer must issue a written decision on a stay request.

These provisions make it clear that only the Regional Forester can issue a decision on a stay. Because the “stay” was issued by a Deputy Regional Forester not the line officer one administrative level higher than the deciding officers, the stay is void and should be vacated.¹

2. The Stay is Procedurally Deficient and Should Be Vacated

Section 10 of the Optional Procedures sets out requirements for the reviewing officer. At least two of those requirements have not been met.

A. Section (f)(3) requires that a reviewing officer shall consider “any information provided by the deciding officer or other party to the appeal in response to the stay request.” American Whitewater intervened in the Georgia Forest Watch appeal and is a party to the appeal.

American Whitewater, on October 26, 2009, submitted a detailed opposition to October 26, 2009, stay request of Georgia Forest Watch. The Forest Service, in its haste to grant the stay, issued a decision only 6 days after the request was filed, and gave no indication that any of the information submitted by American Whitewater was considered in issuing a “stay.” If for no other reason, the stay should be withdrawn and reconsidered, taking into account the information submitted by American Whitewater.

B. Section (g)(1) states that “If a stay is granted, the stay shall specify the specific activities to be stopped, duration of the stay, and **reasons for granting the stay.**”

¹American Whitewater previously called the Forest Service’s attention to the fact that this entire review process has been unlawful in that it fails to follow the Chief’s directive that the plan amendments be conducted by the Regional Forester, and not the Forest Supervisors, and that appeals be heard by the Chief, not the Regional Forester. This “stay” demonstrates the lengths to which Forest Service personnel have attempted to keep the entire process confined within the Southern Region and away from the headquarters, where essentially the same decision was found unlawful and unsupported in 2005.

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After millions of dollars in money spent for studies that do not comply with the law and thousands of pages of documentation, the “reasons” stated for granting the stay are:

Due to the volume and complexity of issues raised in these appeals, I believe granting your stay request is the most prudent course of action.

The granting of this stay allows for a meaningful appeal process to proceed based on the merits of each issue raised by all of the appellants.

Thus, the status quo is preserved until a decision is finalized on each of the appeals filed.

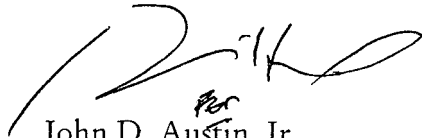
None of those are “reasons for granting a stay.” They are simply unsupported opinions based on expediency and cannot by any conceivable standard of review constitute the reasoned explanation for why such a significant decision was made.

3. This Request Is Not a Request for Discretionary Review

American Whitewater is aware that Section 10 (h) states that a reviewing officer’s decision on a request to stay implementation of a significant amendment or revision of a Plan is not subject to discretionary review at the next administrative level.

This request, however, does not seek a substantive review of the stay. Instead, it seeks to have the review set aside on procedural grounds, i.e. it was not decided by the lawfully designated official and it fails to comply with the rules requiring consideration of information and statement of reasons. The reviewing officer and the Chief each have sufficient authority to vacate a stay that has not been lawfully issued.

Sincerely,



Per
John D. Austin, Jr.
PATTON BOGGS LLP

*Counsel for Appellants
American Whitewater, American Canoe Association,
Atlanta Whitewater Club, Georgia Canoeing Association,
and Western Carolina Paddlers*

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cc:

| <u>Other Appellants:</u> | <u>Deciding Officers:</u> |
|--|---|
| Friends of the Upper Chattooga Attn: Butch Clay 10320 Highlands Hwy. Mountain Rest, SC 29664 | USDA Forest Service Attn: Forest Supervisor Monica J. Schwalbach 4931 Broad River Road Columbia, SC 29212 |
| Friends of the Upper Chattooga Attn: Michael Bamford P.O. Box 2725 Cashier, NC 28717 | USDA Forest Service Attn: Forest Supervisor Marisue Hilliard 160 A Zillicoa Street Asheville, NC 28801 |
| Chattooga Conservancy Attn: Buzz Williams 8 Sequoia Hills Lane Clayton, GA 30525 | USDA Forest Service Attn: Forest Supervisor George M. Bain 1755 Cleveland Highway Gainesville, GA 30501 |
| Georgia Forest Watch c/o Rachel S. Doughty Paul, Hastings, Janofsky & Walker LLP 55 Second Street, FL 24 San Francisco, CA 94105 | |